

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILLY ESSLEY,

Defendant.

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Case No. 07-5067-01-CR-SW-RED

ORDER

Now before the Court is Defendant's Motion to Declare Title 8, United States Code, Section 1324 Unconstitutional as Applied to Defendant Billy Essley (#40), the Government's Response (#43), the Report and Recommendation of United States Magistrate Judge (#44), and Defendant's Objections (#45).

Defendant Billy Essley argues that the statutes under which he was charged are unconstitutional on their face and as applied because they are vague, do not provide fair warning, and do not set standards for authorities to use when enforcing the laws. On July 29, 2007, United States Magistrate Judge James C. England recommended that Defendant's motion be denied. Defendant objected to the Report and Recommendation. Defendant argues that Magistrate Judge England "views the question of adequate notice as a jury question rather than a legal determination." Defendant is incorrect. The Report and Recommendation fully address Defendant's constitutional notice requirement as a matter of law and not as a jury question. Magistrate Judge England also notes, however, that Defendant has improperly conflated some of his arguments on the merits of this case with his constitutional argument. The Court agrees with Magistrate Judge England's conclusion.

Upon careful and independent review of the pending motion, the suggestions filed by the parties in regard to said motion, and the applicable law, the Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge (#44) in full and **OVERRULES** Defendant's objections (#45). Defendant's Motion to Declare Title 8, United States Code, Section 1324 Unconstitutional as Applied to Defendant Billy Essley (#40) is **DENIED**.

IT IS SO ORDERED.

DATE: August 20, 2008

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT